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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,042	12/19/2001	Neeman Malek	UBI071	3644

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EXAMINER
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JACKSON, ANDRE L

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 <b>Office Action Summary</b>	Application No. 10/029,042	Applicant(s) MALEK ET AL.	
	Examiner Andre' L. Jackson	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2004.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 13-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 13-15, 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 16-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 2,776,447 to Addicks in view of USPN 2,890,480 to Gregg et al. Addicks discloses a spring balance assembly comprising;

a window frame; a window sash movably mounted in the window frame, a torsion spring (1) having a first end (near 11) and a second end (near 2), a spiral rod (12) within the torsion spring having a third end (near 16) near the first end, a fourth end (near 2) near the second end, and a first axis through the third end and the fourth end, a thread follower (6/11) mounted on the spiral rod for being rotated by the spiral rod when the follower is moved along the spiral rod between the third end and the fourth end of the spiral rod, the threaded follower being attached to the first end of the torsion spring for being moved by the torsion spring axially with respect to the window frame between the third end and the fourth end of the spiral rod and for rotating the first end of the torsion spring by rotation of the follower, a first means (2/3) for attaching the second end of the torsion spring to a window sash for axial movement of the torsion spring by the sash for moving the follower along the spiral rod by moving the sash, a mounting assembly (13/14) fixedly mounted on the window frame, attached to the third end of the spiral rod preventing axial movement of the rod relative to the window frame.

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However, Addicks fails to disclose a gear assembly comprising a first gear and a second gear mounted on a bearing frame fixedly mounted on the window frame as claimed. Gregg et al teaches a sash balance assembly including a first gear (4) and a second gear (7) mounted on a bearing frame (71) fixedly mounted on the window frame, the first gear attached to a third end of a spiral rod (21) preventing axial movement of the spiral rod with respect to the window frame and for rotating the spiral rod by the first gear when driven by the second gear for changing base force in the torsion spring. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the sash balance assembly of Addicks to incorporate the gear assembly as taught by Gregg et al to provide an adjustable spring balance assembly providing adjustment to the tension in the spring for size and weight of the sash to be achieved.

As to claim 17, Gregg et al further teaches a keyed hole (8) in the second gear, an insert (screwdriver bit) in the keyed hole, keyed to the hole so that the insert rotates the second gear when the insert is rotated. A means (6) for urging the insert from a first position (4 and 7 engaged, with 6 compressed) on the second gear to a second position (4 and 7 disengaged, with 6 extended) on the second gear, means (10) on the bearing frame contacting the insert (contact through the second gear) for preventing rotation of the insert when the insert is in the second position.

### **Allowable Subject Matter**

Claims 1, 13-15, 19 and 20 are allowed over the prior art of record.

Claim 13 was previously indicated as being allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art does not disclose or suggest the combination or specific arrangement of the structural limitations as set forth in the claims above.

In particular, the prior art does not disclose or suggest the limitations presented in claims 1, 14 and 15, where a window balance assembly comprises a torsion spring having opposing ends, a spiral rod within the torsion spring having a third end near a first end, a fourth end near a second end. A threaded follower is provided and mounted on the spiral rod, the spiral rod positioned between the third and fourth ends of the spiral rod. The threaded follower is attached to the first end of the torsion spring. A first means attaching the second end of the torsion spring to a window sash, where the fourth end of the spiral rod is disconnected from the first means such that the spiral rod is prohibited from moving by the first means.

As to the patentability of claim 19, the prior art fails to disclose or suggest a window balance assembly comprising a torsion spring having opposing ends, a spiral rod within the torsion spring having a third end near a first end, a fourth end near a second end. A threaded follower is provided and mounted on the spiral rod, the spiral rod positioned between the third and fourth ends of the spiral rod. The threaded follower is attached to the first end of the torsion spring. A first means attaching the second end of the torsion spring to a window sash. A gear assembly comprising a first gear and a second gear fixedly mounted to a window frame and

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attached to the third end of the spiral rod preventing axial movement of the spiral rod with respect to the window frame when the means for attaching is moved axially by the sash.

Regarding claim 20, the prior art of record fails to disclose or suggest a window balance assembly comprising a torsion spring having first and second ends, a spiral rod within the torsion spring having a third end near a first end, a fourth end near a second end. A block fixedly attached to the second end of the torsion spring, the block defining a recess. The recess is configured to receive an unattached fourth end of the spiral rod.

None of the other prior art references disclose or suggest the combination of structural limitations or the arrangement of these limitations as set forth in applicant's claims whether taken singly or used in combination thereof.

### **Response to Applicant's Arguments**

Applicant's arguments filed in the Amendment of December 30, 2004 have been fully considered but they are not persuasive. In response to applicant's remarks present on pages 15, 16 and the beginning of page 17 of the above amendment pertaining to claims 1, 14, 15, 19 and 20, the Examiner agrees with applicant's remarks and the positive limitations recited in the claims are concurrent with the reasoning explained by applicant, therefore, the Examiner believes the above claims are patentably distinct from the prior art of record.

However, applicant's remarks on pages 15 and 17 relevant to claims 18 and 16 respectively if found not to be persuasive.

As to applicant's remarks regarding claim 16 that Addicks in view of Gregg et al does not provide a prima case of obviousness because applicant's invention involves a spring-separated

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screw driver clutch and serves a different purpose from what is considered a gear taught by Gregg et al. Here, the Examiner believes the claim above discloses a gear assembly including a first gear and a second gear. Whether or not applicant's invention features a spring-separated screw driver clutch is irrelevant to patentability of the above claim because applicant's subject matter discussed is not claimed. Since, Gregg et al includes a sash balance assembly having an assembly that performs a specific function in a complete device or mechanism defined as an upper part and a lower part interconnected, which is interpreted as a first gear and a second gear, thus, the limitations as presented in claim 16 are met.

Next, to address applicant's remarks pertinent to claim 18 that Addicks in view of Gregg et al do not disclose or suggest a threaded follower attached to the torsion spring so that it moves up and down with the spring. In contrast, applicant states neither Addicks nor Gregg et al singly or in combination disclose such a feature. In response to applicant's argument, the Examiner believes applicant refers to the recitation in claim 18 stating "said threaded follower being attached to the first end of said torsion spring **for being moved by the torsion spring axially with respect to the window frame**". It has been held that a recitation (the intended use phrase in bold text) of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Therefore, since Addicks in view of Gregg includes the structure (threaded follower) corresponding to applicant's structure (threaded follower) and Addicks in view of Gregg et al

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includes a threaded follower, which is capable of performing the intended use, then claim 18 is anticipated.

Concluding, the Examiner believes all of applicant's intended remarks have been fully addressed and the status of the claims are as follows: Claims 1, 13-15, 19 and 20 are patentable over the prior art of record. Claims 16-18 are found to be unpatentable over Addicks in view of Gregg et al.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (703) 605-4276. The examiner can normally be reached on Mon. - Fri. (10 am - 6 pm).




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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PRIMARY EXAMINER